

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARCUS HOWERTON,

Plaintiff

v.

CLARK COUNTY DETENTION CENTER,
et al.,

Defendants

Case No.: 2:22-cv-00280-APG-VCF

**Order Granting Motions to Dismiss and
for Leave to File Supplement**

[ECF Nos. 21, 22]

Defendant Joseph Lombardo moves to dismiss this case with prejudice for failure to prosecute. He also moves for leave to file a supplement to the motion to dismiss. Howerton has not responded to either motion.

I grant the motions because the factors I consider when deciding whether to dismiss a claim for failure to prosecute weigh in favor of dismissal with prejudice. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). Although this case has not been pending for an extraordinarily lengthy period of time, discovery was extended once because Howerton was not participating and Lombardo could not locate him. *See* ECF Nos. 19, 20. Thus, the “public’s interest in expeditious resolution of litigation” and the “court’s need to manage its docket” weigh in favor of dismissal. *Pagtalunan*, 291 F.3d at 642. Additionally, Lombardo has been thwarted in his efforts at discovery and therefore is prejudiced. *Id.* There are no less drastic alternatives because despite Howerton recently communicating with Lombardo, he still has not responded to the pending motions or otherwise taken any action to prosecute this action. *Id.*; ECF No. 22 at 2-3. Finally, although the public policy favoring disposition of cases on their merits weighs

1 against dismissal, all the other factors weigh in favor. *Pagtalunan*, 291 F.3d at 642. I therefore
2 grant Lombardo's motions and dismiss this case with prejudice for failure to prosecute.

3 I THEREFORE ORDER that defendant Joseph Lombardo's motions to dismiss and to
4 supplement (**ECF Nos. 21, 22**) are **GRANTED**. The clerk of court is instructed to enter
5 judgment in favor of the defendants and against the plaintiff, and to close this case.

6 DATED this 9th day of August, 2023.

7 

8 _____
9 ANDREW P. GORDON
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23